

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAMON NAVARRO LUPERCIO,

Petitioner,

v.

OFFICE OF THE CLERK OF COURT,

Respondent.

No. 1:22-cv-00338-ADA-HBK (HC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, DISMISSING  
PETITION FOR WRIT OF HABEAS  
CORPUS, DIRECTING CLERK OF COURT  
TO CLOSE CASE, AND DECLINING TO  
ISSUE CERTIFICATE OF APPEALABILITY

(Doc. Nos. 13, 20)

Petitioner Ramon Navarro Lupercio is a state prisoner proceeding *pro se* with an amended petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 29, 2022, the assigned magistrate judge issued findings and recommendations recommending that the pending petition be dismissed as successive.<sup>1</sup> (Doc. No. 20.) Those findings and recommendations were served on petitioner and contained notice that any objections

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<sup>1</sup> The Court notes a scrivener's error in the findings and recommendations that identifies the initial petition as the operative pleading (Doc. No. 1) as opposed to the first amended petition (Doc. No. 13). The Clerk of Court correctly docketed the findings and recommendations as recommending dismissal of the amended petition. (Doc. No. 20.) The Court also notes that, assuming arguendo, the findings and recommendations addressed the initial petition, any error would be harmless because the initial petition and the amended petition are identical.

1 thereto were to be filed within fourteen (14) days of service. (*Id.*) On May 5, 2022, petitioner  
2 timely filed objections that, to the extent discernable, restate the assertions made in his amended  
3 petition. (Doc. No. 22.)

4 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a  
5 de novo review of the case. Thus, having carefully reviewed the entire file, including petitioner's  
6 objections, the court holds the findings and recommendations to be supported by the record and  
7 proper analysis.

8 Having found that petitioner is not entitled to habeas relief, the court now turns to whether  
9 a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus has no  
10 absolute entitlement to appeal a district court's denial of his petition, and an appeal is only  
11 allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); 28 U.S.C.  
12 § 2253. Where, as here, the court denies habeas relief on procedural grounds without reaching  
13 the underlying constitutional claims, the court should issue a certificate of appealability "if jurists  
14 of reason would find it debatable whether the petition states a valid claim of the denial of a  
15 constitutional right and that jurists of reason would find it debatable whether the district court was  
16 correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In the present  
17 case, the court finds that reasonable jurists would not find the court's determination that the  
18 petition should be dismissed debatable or wrong, or that petitioner should be allowed to proceed  
19 further. Therefore, the court declines to issue a certificate of appealability.

20 Accordingly,

- 21 1. The findings and recommendations issued on April 29, 2020 (Doc. No. 20) are  
22 adopted in full;
- 23 2. The amended petition for writ of habeas corpus (Doc. No. 13) is dismissed;
- 24 3. The court declines to issue a certificate of appealability; and

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- 1           4.       The Clerk of Court is directed terminate any pending motions/deadlines and to  
2                   close the case.

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5 IT IS SO ORDERED.

6       Dated: September 13, 2022

  
UNITED STATES DISTRICT JUDGE